

2014 WL 7792833 (Miss.) (Appellate Brief)
Supreme Court of Mississippi.

Caron D. CROWELL, Appellant,

v.

The Estate of Jacqueline Crowell TROTTER, By Alan Trotter, Administrator, Appellee/Cross Appellant.

No. 2012-CA-01229.

April 2, 2014.

Appeal from the Chancery Court of Sunflower County, Mississippi
Oral Argument Requested

Reply Brief of Cross Appellant

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***1 INTRODUCTORY STATEMENT**

In her “Summary of the Argument”, Caron attempts to justify her conversion of her mother's funds by implying that this money went to pay Mrs. Crowell' s bills and expenses. This is not true. There is not one shred of evidence indicating that any of the funds Caron has now been ordered to pay back to the estate by the Chancery Court or the additional funds which Jackie now seeks on this cross appeal, were used to pay any of Mrs. Crowel's bills and expenses. To the contrary, the Court ordered audit

conducted by the CPA Jackson and the general ledgers of Mrs. Crowell's bank statements he prepared reflect that all of Mrs. Crowell's bills and expenses were paid from a separate account belonging to her (Ex. Vol. 3, p. 301 - 387). This account was funded primarily with an annuity in the approximate amount of \$152,000.00 (T. Vol. II, p. 291-293), but also regularly with Mrs. Crowell's income each year of farm rent, PERS and Social Security payments.¹

Caron also did not "put her life on hold" to take care of her mother. She did quit working in 1997 when Mrs. Crowell gifted each of her daughters \$80,000.00 from the sale of timber, electing at that time to instead travel extensively to Mexico and in Europe, while spending about half of her time with her mother rent free (T. Vol. III, p. 358-359). This was perhaps Caron's first real taste of her mother's money, but certainly not the last.

Caron's statement that she lived with her mother from December 2001 until Mrs. Crowell's death in October 2006 is also not correct. The correct statement is that she lived in her mother's house rent free during that period, while Mrs. Crowell was confined to various nursing homes *2 suffering from [Alzheimer's disease](#).

And Caron most assuredly did misappropriate her mother's funds.

I. Conversion of funds payable on death to Jackie.

A. Union Planters Account(s)

Jackie's cross appeal asserts that she should have been granted a judgment against Caron for Caron's conversion of an account at Union Planters Bank (now Regions²) with a balance of approximately \$125,000.00 and payable on death to Jackie. This account was closed by Caron via her second power of attorney. Caron then took this money and purchased two CDs at separate banks in Tennessee solely in her mother's name (T. Vol. II, p. 254).

Caron now states in her brief that the supporting document for this account in Lewis Jackson's court ordered accounting of Mrs. Crowell's assets as of January 1, 2002, is a checking account at Union Planters that she, Caron, opened at that bank on December 22, 2002, payable on death to Jackie. This is technically correct and a mistake by Jackson. She then reasons that since she was the one who created that account in such a style, surely no one can complain that she later closed the account on June 26, 2003, using the "more fulsome" power of attorney executed the day before by Mrs. Crowell at the nursing home. Caron attempts to support her contention in this regard about the account by supplementing the record with a signature card from Union Planters Bank reflecting that this "checking account" payable on death to Jackie was opened on December 26, 2002 by Caron herself, and *3 by virtue of the then power of attorney she had from her mother. However, not only is Caron's logic about this account i.e. "no harm no foul" twisted reasoning, it is also a deliberate attempt by Caron to mislead this court about this particular account.

As part of his court ordered compilation of Mrs. Crowell's income and expenses for the year 2002, Louis Jackson attached to his summary Mrs. Crowell's income tax return for the year 2002 (Ex. Vol. p 10-11) This return reflects that interest was paid to Mrs. Crowell from Union Planters Bank for the year 2002 in the amount of \$7118.00. Obviously, the checking account opened by Caron on December 22, 2002 didn't yield this interest, and it is not hard to connect the lines and see that this checking account represents funds from a maturing CD at that bank, that, according to the 2002 return, was Mrs. Crowell's largest interest paying investment for that year. One can further surmise that this account was likewise payable on death to Jackie and that when dealing with the bank in opening the checking account with the maturing CD funds, Caron would have been hard pressed to take her sister off of the account at that time. Caron apparently then had some trouble closing this account with her first power of attorney, so she obtained the second "more fulsome" power of attorney from her mother on June 25, 2003 (Ex. Vol. 3, p. 397) which she used the following day to close the Union Planters' account. According to Caron, she then invested this

money in two separate CDs in banks in Tennessee, solely in her mother's name. These funds therefore never made it to Jackie and remain unaccounted for.

Caron now owes this money to Jackie. It would seem that she also owes this Court an apology for her deliberate misrepresentation to the Court, just one more example of her *4 contempt for our courts and judicial system.

B. Merchants and Farmers Bank CD

This \$52,000.00 CD was payable on death to both Caron and Jackie, however, when it matured, Caron transferred it to an account solely in her name (T.Vol. VI, p. 805). She falsely states in her brief that she used these proceeds to pay her mother's bills. Not only is this contrary to the CPA Jackson's ledger and accounting of Mrs. Crowell's bills and expenses prior to her death, but Caron, at trial, admitted that she cashed and spent this money after her mother's death to pay her own bills and expenses (T. Vol. VI, p. 804-808). As she said at trial "they were mine".

But for Caron's misuse of her power of attorney to change the style of this investment when it matured, this money would have gone one half to both Caron and Jackie on Mrs. Crowell's death; and Jackie is therefore now entitled to a judgment against Caron for one half of this amount, or \$26,281.10.

II. Caron's unauthorized payments to herself of "living expenses" under her power of attorney.

Armed with the "more fulsome" power of attorney which Caron obtained in June 2003 while Mrs. Crowell was confined to an Alzheimer's unit at a nursing home, Caron began paying herself living expenses from Mrs. Crowell's funds. These payments, characterized at times by Caron's attorney as salary (T. Vol III, p. 331) but reported on Mrs. Crowell's returns as gifts (T. Vol. II, p. 283), were never authorized by any Court and over the course of 3 1/2 years, amounted to \$175,148.00.

*5 Caron vaguely argues in her brief that she was paying bills and expenses for her mother from these payments, but this is not correct, as Jackson's audit of Mrs. Crowell's accounts shows that all of Mrs. Crowell's bills i.e. nursing home, sitters, etc, as well as most of the expenses for her home where Caron (and not Mrs. Crowell) was living free, were being paid by Mrs. Crowell's other funds³ and not in issue here and certainly her questionable power of attorney gave her no right to pay herself these funds.

The two cases cited by Caron in her brief in support of her use of her power of attorney to pay herself these sums, are not applicable. In [Murrey v. Laird](#), 446 So.2d 575 (Miss. 1984), the Chancellor had set aside an **elderly** man's deed to his son when the father was in poor health and in a nursing home and the son was then handling his business, primarily because the father did not obtain any independent advice. The Supreme Court affirmed; and in [Arnold v. Dubois](#), 747 So.2d 979 (Miss. App. 1999), the Court of Appeals affirmed the lower Court's upholding an **elderly** mother's deed, by power of attorney, of her 1/9 interest in 120 acres of land to her daughter, where there apparently was sufficient evidence that this act was the mother's wishes (dissent didn't think so).

Instead, the well settled law in this state regarding an agent's use of a power of attorney given by his or her principal is quite clear:

The relationship between these parties as heretofore declared by the Court was that of a principal and agent. A *cardinal requirement* (emphasis added) of that relationship is that the agent shall be at all times loyal and faithful to the interest of the principal, and he can *6 acquire no private interest of his own in opposition to that of his principal. There is a fiduciary relationship which forbids the agent in any manor to place himself of his own volition in a favored position as against the principal in respect to the transactions growing out of the relationship.

[Van Zandt v. Van Zandt](#), 86 So.2d. 466, 470 (Miss. 1956) (citing from [McDowell v. Minor](#), 131 So., 278 (Miss. 1930)).

Stated another way, in *McKinney v. King*, 498 So.2d 387 (Miss. 1986), (there setting aside a deed executed with a power of attorney) :

It is fundamental law that an agent owes his principal absolute good faith and fidelity, and he cannot in the exercise of his authority as agent acquire property or interest therein that rightfully belongs to his principal without full disclosure and free consent of his principal.

In our case, at the time of all of these payments, Mrs. Crowell was confined to an Alzheimer's unit in a nursing home and obviously did not "freely consent" to any of this. In addition, Caron's frequent references in her brief that she was acting on advice of counsel when she used her power of attorney in this fashion are not supported by the evidence. In fact, the only evidence about such advice is Caron's own self serving testimony, which is not credible; and it is submitted that no attorney in his right mind with any inkling of what was going on would have advised Caron to do this, any more than Lawson Holiday advised her to disinherit her sister with her power of attorney (T. Vol IV, p. 512) or Barry Jackson advised her to get a new will leaving everything to herself (T. Vol. IV, pg. 493), as she testified at trial. Her statements in this regard are ludicrous. Jackie submits that regardless of whether these payments are characterized as salary, living expenses for Caron or gifts, Caron's use of her power of attorney to pay herself these funds was illegal and fraudulent, and Caron either owes this money back to the estate or Jackie is entitled to a judgment against her for 1/2 of this amount.

***7 III. Jackie is entitled to a judgment against Caron to equalize the annual exclusionary gifts which Caron and not Jackie received during the period 1999 through 2003, amounting to \$63,000.00.**

Mrs. Crowell treated her daughters equally under her will (Cp.49), with the gifting of the proceeds from the timber sale in 1997 (T. Vol. II, p. 275-276), and with the annual gift tax exclusion for the year 1998. However, beginning in 1999, after the establishment of the confidential relationship between Caron and Mrs. Crowell, and continuing through 2003, when Caron was making the gifts to herself with the power of attorney, only Caron received the annual exclusion gifts; and it was only after the CPA Jackson insisted that Caron make similar payments to Jackie that she reluctantly resumed these payments for the years 2004 through 2006 (T. Vol. V, p. 652).

Accordingly, Jackie is entitled to a judgment for the amount of annual gift exclusions which Caron received and she did not, in the amount of \$63,000.00, plus interest.

IV. Caron's fraudulent and malicious acts justify an award of punitive damages and attorneys fees in favor of Jackie.

Caron continues to misrepresent the facts in this final argument, while the only support for most of her assertions is her own self-serving, rambling and intelligence-insulting testimony. Although not relevant, Caron's claim that Jackie had **neglected** to visit or help with her mother is misleading. Jackie of course died prior to the trial, but her husband Alan testified to a good albeit long distance relationship between Jackie and her mother (T. Vol. II, p. 229-230) until of course when Caron moved back. Things changed at that time, as Alan pointed out, and Jackie's calls and letters now went unanswered (T. Vol. II, p. 233).

***8** Common sense dictates that the last thing Caron needed while she was dealing with and misappropriating her mother's funds was for her sister Jackie to come back and get involved in her affairs.

Alan Trotter further testified that when Mrs. Crowell's sister in Memphis, Katie, notified Jackie that she had located Mrs. Crowell at Golden Age Nursing Home in Greenwood, he and his wife traveled from North Carolina to visit her, but she was unable to recognize them. Although Mrs. Crowell's personal and financial affairs had for years begged for the appointment of a conservator for her, Caron had done everything in her power to avoid this, and her testimony that she could not find an attorney with time to do this is not credible (T. Vol. VI, p. 760-763, Vol. III, p. 369). Then, when Jackie filed for the conservatorship,

Caron's response was to move Mrs. Crowell from Golden Age in Greenwood (T. Vol. III, p. 424) to an institution in Ruleville, and then subsequently to a nursing home in Oxford, where Mrs. Crowell died in October, 2006.

Caron's misconduct continued after her mother's death. She refused to probate her mother's will (which she had in her possession) for 9 months, and then only after Jackie petitioned for and had herself appointed as administratrix (CP. 10-14). Although the Order admitting the will to probate, entered on October 3, 2007, directed Caron to inventory her mother's assets and to fully account for her mother's funds since she (Caron) had moved to Ruleville (CP. 32-36), Caron continued to obstinately refuse to inventory or account. Jackie was therefore forced to file a Motion to Compel (CP. 60-62), resulting in an Order entered by the Court on March 31, 2009, directing Caron to do so under threat of sanctions (CP. 63-64).

Of course, once Caron did reluctantly begin to account and inventory Mrs. Crowell's assets, *9 the reason for her "stonewalling" became obvious: through gifting to herself, restyling CDs to fall to Caron on Mrs. Crowell's death, and outright payment of unauthorized sums to herself, Caron had managed to deplete Mrs. Crowell's estate of over a million dollars during the six years she had been in control.

Yet Caron's obstructionism continued through the estate proceedings, as files went missing from the Chancery Clerk's office (T. Vol. III, p. 366-376) resulting in Caron being banned from the courthouse and then presiding Chancellor, Jane Weathersby⁴, was caused to recuse herself when she was forced to arrest Caron for going to see Judge Weathersby's **elderly** mother (who Caron did not know) in an Indianola nursing home (T. Vol. I, p. 88; T. Vol. III, p. 443-446).

As reflected by the record, Caron's remained obstinate at trial, as she attempted to evade answering even the simplest of questions.⁵ Following the trail of Mrs. Crowell's CDs was extremely arduous, and intentionally made so by Caron, as she admitted "I restyled them and drove them around (T. Vol. IV, p. 499). Caron ridiculously testified that she was acting on advice of counsel when she paid and transferred these funds to herself, and further that her malicious acts were really just for "asset protection" and/or "estate planning" (T. Vol. IV, p. 521-523). As always, Caron mocked the system throughout the proceedings, claiming at one point that she had given Mrs. Crowell's gold kruggerands to her dog (T. Vol. V, p. 753).

*10 Jackie recognizes and appreciates that punitive damages should be allowed with caution and within narrow limits. On the other hand, a key justification for such damages is "as a warning and example to deter not only the offender but others similarly situated from committing like offenses in the future *West Bros., Inc. v. Barefield*, 124 So.2d 474 (Miss. 1960). Surely the egregious pattern of conduct on Caron's part in this case reaches that stage. Arguably, her malicious actions toward her mother and sister are compounded by the fact that Caron is an attorney, at one time licensed to practice in two states (T. Vol. III, p. 356).

Caron's contention on this appeal that she was always acting in good faith is laughable. Her actions beginning with the annual gifts solely to herself, followed by changing the style of her mother's CDs to add her own name and then the use of her power of attorney to eliminate her sister's name from Mrs. Crowell's accounts as well as pay herself unauthorized and unjustified "living expenses," reek of bad faith.

Caron's actions also clearly constitute fraud, a well recognized basis for an award of punitive damages. *Fowler Butane Gas Co. v. Barner*, 141 So.2d 226, 233 (Miss. 1963) *T. G. Blackwell Chevrolet Co. v. Seeshee*, 261 So.2d 481 (Miss. 1972)

Contrary to Caron's assertion in her brief, the two estate cases cited in Jackie's brief in support of her argument for punitive damages, *Smith v. Orman*, 822 So.2d 975 (Miss. App. 2002) and *In Re Dissolution of Demoville Partnership*, 26 So.3rd 366 (Miss. App. 2009) are exactly on point, as both deal with the misappropriation of funds by one owing a fiduciary duty to another.

*11 This case is now in its eighth year, post Mrs. Crowell's death, and because of Caron's acts⁶, both Jackie and now her estate have been forced to literally chase Jackie's inheritance which Caron tried to steal. Without the award of punitive damages, the expenses and attorney fees which Jackie and her estate have had to incur, through no fault, will be solely born by Jackie's estate *Miss. Power & Light Co. v. Cook*, 832 So.2d 474 (Miss. 2002). However, where punitive damages are merited, an award

of attorney's fees is clearly justified *Sudeen v. Castleberry*, 794 So.2d 237, 252 (Miss. App. 2001), citing *Aetna Casualty & Surety Co. v. Steele*, 373 So.2d 797, 801 (Miss. 1979).

CONCLUSION

The record demonstrates that Mrs. Crowell's accounts that had previously been styled payable on death to Jackie, and were changed by Caron, were never received by Jackie and she is therefore entitled to a judgment against Caron on this cross appeal for these amounts. Caron's misuse of her power of attorney to make annual exclusion gifts to herself and not to her sister Jackie as well as to pay herself unauthorized (and unjustified) living expenses violates the very tenet of the fiduciary relationship between agent and principal and must result in a judgment against Caron for the amounts she took. Finally, as to the issue of punitive damages, as pointedly recognized by this court in *Tideway Oil Programs, Inc., et al v. Serio*, 431 So.2d 454 (Miss. 1983), at 460:

Regrettably, there are individuals in this state that behave in such a way that the only appropriate judicial response is the stinging assessment of punitive damages.

Respectively, this is such a case and, in fairness, the granting of such an award will also allow *12 Jackie's estate to recoup legal expenses needlessly incurred because of Caron's acts.

Footnotes

- 1 See Jackson's Income and Expense Statements for Mrs. Crowell for years 2003 through 2006 (Ex. Vol. I, p 9, 23, 40, 57 75)
- 2 In her initial brief, at one point Jackie mistakenly refers to this as an account at Planters Bank.
- 3 Jackson's ledger tracts Mrs. Crowell's account and the payment of her bills month by month in this cumulative exhibit (Ex. 90).
- 4 Prior to her recusal, however, Judge Weathersby candidly pointed out to Caron's then attorney "but for your client, it (the estate) would be wrapped up" (T. Vol. I, p. 49).
- 5 At one point, Judge Lutz described her testimony as obfuscatory and throwing up a smoke screen (T. Vol. III, p. 384).
- 6 At one point during her testimony, Caron rationalized "I didn't think anybody would ever challenge this. I didn't think my sister would want anything." (T. Vol. VI, p. 764)

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